


United States Bankruptcy Court
Eastern District of Washington

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FROM: Ted McGregor 

TO: Bankruptcy Advisory Committee; Judge Williams, Don Boyd, Judge Rossmeissl, Judge Klobucher, Jake Miller, Ford Elsaesser, Dan Brunner, Rolf Tangvald, Greg Beeler, Erik Bakke, Dan O'Rourke, Jan Armstrong, Bonnie Charney, Jennifer Aspaas

SUBJECT: Report of Standing Advisory Committee Meeting

The Standing Advisory Committee met at Sun Mountain on June 6, 2002. All members were present except Ford Elsaesser and Rolf Tangvald. Also present were Bev Benka, Tap Mennard, Jason Alderson and Brent Sorenson. The meeting was called to order at 1:00 p.m. by the co-chairpersons, Chief Judge Williams and Don Boyd.

Judge Williams reported from Chambers in Spokane that due to some absences by both she and Judge Klobucher, life has been somewhat hectic. Even though the number of new cases has remained steady, there is a need to do some catching up.

Judge Rossmeissl reported that during his recent back surgery Judge Peterson from Montana lent a hand. He said that he has returned to almost full duty. He introduced Jason Alderson, who is the recipient of the Ward Hanel Award. He will be working in Yakima during the summer and then work from Spokane once the law school begins classes. Jason thanked the Association for the award.

Judge Klobucher reported that he was able to put some time in, both from his home and from his chambers. He noted that his schedule is quite flexible, and would be willing to work out hearings with like flexibility.

Don Boyd reported that the Association just conducted its elections, and that returning board members were Gary Farrell, Ian Ledlin and himself to serve until 2005. He reported that the mediation seminar is being arranged and would likely be offered in September or October of this year. He said that the Association's finances are in good shape, and that the tax problems are on

their way to resolution. He also announced that the attorneys selected for participation in the East/West Judges Retreat in September were Tim Carlson, Mike Pauckert and Jerry Talbott. Finally, he said that NOTES had just been published, and that the publishing schedule is now on track. He also noted that the Association would be presenting each of the judges with a "WSBA Code of Professionalism" plaque at the close of the seminar.

Ted McGregor gave the report from the Clerk's office. He distributed statistical reports showing that filings had decreased just slightly, but still anticipated that filings for the calendar year would exceed 10,000. The statistics also demonstrated that the distribution of filings as to location and chapter is largely unchanged. About 75% of the cases filed are Chapter 7, 25% Chapter 13 and less than 1% Chapters 11 and 12. He also reported that for the first 5 months of 2002, about \$235,221 had been distributed to Chapter 7 trustees.

Next, he spoke of automation initiatives in the Clerk's office. He noted that of the 11,000 documents filed in Chapter 7 cases during the month of April, 2002, 10% were electronic, and of the 10,000 documents filed in Chapter 13 cases for the same period, 23% were electronic. He reported that the electronic initiatives with the Chapter 13 office are continuing to be very successful. He announced that in the very near future he intends to require that lists of creditors required to be submitted by LBR 1007-1, be on a 3 ½ inch floppy disc. He said that under the current system, a paper list is filed and then scanned into the court's data bases using OCR technology, and not ordinary scanning such as is used for other documents. He said that the OCR process requires realignment of the data by a deputy in an almost hand fashion. This task is tedious, time consuming and subject to errors. By using floppy discs, the only work for the deputy to do is to add certain names and change certain addresses in accordance with instructions received from select creditors.

He said that CM/ECF would become available in the district in mid 2003. He then gave a detailed history of automation in the courts, particularly relating to the introduction of the nationally sponsored electronic filing system, CM/ECF. He also informed the members that orders were being signed electronically by both Judge Williams and Klobucher, as well as various ministerial orders by deputy clerks. He noted that processing of a paper order requires about 6 ½ minutes from signing to entry and noticing where required, whereas when done electronically, the processing time is reduced to about 45 seconds. In May of 2002, of the 211 orders confirming Chapter 13 plans, 80 were e-filed, resulting in a time savings of approximately 7 hours.

Next, Jake Miller gave the report from the office of the U.S. Trustee. He reported that his office was being assigned an additional attorney, as well as possibly an additional half time clerical person. He said that these additional resources, although assigned for humanitarian reasons, will be most helpful in assisting in his office in the greater emphasis on what has been termed civil enforcement. He also noted that Chapter 12 is now available until the end of 2002, but that its continuation beyond that would depend upon passage of the reform bill in which Chapter 12 would be made permanent, or other additional legislation.

Regarding the reform bill, yet to be passed, Jake said that it will "change your life," but that it

generally included a 6-month lead time. He noted that the abortion issue is the only yet unresolved issue, but gave no prediction as to whether or not it would in fact be passed.

Next on the agenda was the report from the Chapter 13 office. Dan Brunner passed out some statistical data and explained that in May of 2002, 202 new cases were filed, and 100 cases were confirmed. He noted that for the first half of the fiscal year 2002, his office had disbursed close to 10 million dollars, and he projected that for the entire year the figure would be about 20 million, of which \$750,000 would be for attorney fees. He noted that approximately 70% of all documents were being electronically filed with the court, but that he expects the figure to approach 100% in the very near future. He explained that his office recently contracted with a third party noticing service that will operate similarly to the way the BNC works for the court. This effort will eliminate the time consuming task of giving notices in-house. He also noted that it is anticipated that on about July 1, 2002 his office will no longer maintain any paper files. He presently receives all filed documents in electronic format, but also receives a paper copy on some items. Bev Benka, who has worked without paper for some time reported that it works fine.

Judge Rossmeissl noted that from the statistics, it appears as though the number of unconfirmed cases is increasing. Dan responded by noting that that is true as to the raw figures, mostly related to the increase in filings, but that as a matter of percentage, in 1999, 23% of the cases were unconfirmed, whereas for 2002, the figure is 20%.

Jennifer Aspaas next reported on "out of district" issues. She reported that the Western District had begun electronic filing under CM/ECF and said that it has reduced the paper in her office. She did note that it is very important for the filer to ensure that any notices are properly given. She said that filings are generally increasing on the west side. Following an observation by Dan Brunner concerning the manner in which notices are returned to the filer, Jennifer said that it is somewhat clumsy, but that the introduction of hyperlink access to documents from the e-mail sent to the filer assisted a great deal. Judge Williams noted that in her conversations with other judges on CM/ECF, her impression is that it is not as efficient and user friendly as one would like, but that it does work. Ted McGregor explained that the next version of CM/ECF does reportedly contain many enhancements.

Next, Greg Beeler gave the report from the Chapter 7 trustees. He noted that they are now inquiring into Social Security Numbers and picture IDs at the meeting or creditors, in addition to asking certain recommended questions of the debtors. He reported the debtors are responding quite well. Where there has been an error in the SSN, a report is made to the U.S. Trustee. The trustee then requests that the debtor amend the petition and send the corrected information to the major credit reporting agencies.

Judge Rossmeissl next reported that the last meeting of the Chapter 13 Sub-committee was very good, and said it appears as though that committee is in the stage of fine tuning a system that is working quite well. He noted that a working group is now addressing issues created when the debtor fails to make a full or complete monthly payment as it relates to payment of secured or continuing claims and attorney fees. Another issue that is being worked on is a situation that

arises where a creditor who has received pre-confirmation adequate protection payments fails to file a proof of claim, and thus is not entitled to receive post confirmation payments.

Dan Brunner also reported that a local proof of claim form is now being used that was designed to eliminate or reduce various common errors somewhat facilitated by the national form.

In response to a question concerning previously announced possible changes in the confirmation process, Judge Rossmeissl responded that the issue is being reviewed internally. He reported that the court wants to come to a decision on the issue once it has been carefully reviewed.

Jan Armstrong next reported that the Fees Working Group had met on several occasions and is hopeful that a final recommendation could be made shortly. The desires of the attorneys had been fairly well laid out, but the issue remaining is compatibility of the Chapter 13 trustee's software.

Jake Miller reported that the Rule 26 Working Group had met and recommended that the local rule should be changed to require disclosure in contested matters only on specific order of the court. Following some discussion, the committee recommended unanimously that the rule as presented, be adopted with the following minor changes to the language:

“In contested matters, governed by FRBP 9014, the provisions of FRBP 26(a)(1), (a)(2), (a)(3) and (f), and the first sentence of (d), and those parts of 30(a), 31(a), 33(a), 34(b), 36(a), 37(a),(b),(c) and (g) that incorporate the foregoing provisions of FRBP 26, all of which are incorporated by reference in to Federal Rules of Bankruptcy Procedure, shall not apply absent an express order of the court.”

Also, that appropriate “Related Provisions” be included. Discussion also was had as whether this rule should be included as a part of LBR 7026-1, or be the subject of a new local rule under 9014, which is the national rule number for contested matters. It was the recommendation that the rule be located under 7026-1.

Next, Ted McGregor introduced a new proposed local rule concerning conversions of Chapter 11 cases to cases under either Chapter 12 or 13. He explained that 11 USC 1112(d) provides for such conversions, but that there is no national rule on the topic. In the case of conversion to Chapter 12, the statute required that the conversion be equitable. Following discussion, the committee recommended unanimously that the rule as proposed, be adopted. Ted McGregor said he would forward the recommendation to the judges for their action.

Ted also introduced discussion concerning the co-debtor stay that is provided for in 11 USC 1201 and 1301. He said that he is seeing more requests for lifting of the co-debtor stay in Chapter 13 cases, and that there is no national rule on the topic. Following discussion, the committee approved the appointment of a working group to study the issue and report back, but suggested that it be dealt with through the Chapter 13 sub-group since it is largely, if not entirely, a Chapter 13 issue. It was suggested that perhaps the Fees Working Group could address the issue at its next meeting.

Next, discussion concerned itself with the make up of the Chapter 13 Sub-committee. Ted explained that that committee was formed from the so called “summit group” that was formed to address Chapter 13 confirmation issues. It was agreed that the sub-committee is a permanent sub-committee and that the selection process for members should be addressed, as well as the schema for its makeup. The recommendation of the committee was that the sub-committee address the issue at its next meeting and report to this committee.

Jennifer next raised an issue of notice requirements for modification to the automatic stay. Presently, the local rule requires notice and hearing to the Master Mailing List for modifications to the stay as well as for abandonments. Jennifer’s suggestion would be to limit the notice for lift stay matters to the trustee, parties who have requested special notice, and parties who have an actual interest in the property involved, such as lien holders. Judge Rossmeissl related that his memory was that when this issue was addressed many years before, notice to the MML was in exchange for a less rigorous process for getting the stay lifted. Greg Beeler and Dan O’Rourke both expressed the view that the panel trustee’s review of notice would be different if notice was not given to the MML. Issues were also discussed that it might be difficult for parties giving the notice to ensure that all lien holders had received notice, which was not a problem where the MML was given notice. Judge Klobucher observed that actually the Eastern District might be the only, or one of very few districts, that require notice to the MML on such matters.

The committee following discussion, appointed a working group to study the issue and report back to the committee. The committee is comprised of Jennifer Aspaas, Jake Miller, Greg Beeler, Eric Bakke and Dan O’Rourke. Ted McGregor will serve in his ordinary capacity, and call the group together.

It was announced that Greg Beeler’s term on the committee was due to expire. Jake Miller said he would solicit the other trustees for interest. Greg said he would be happy to serve another term if there was no other interest.

The next meeting of the committee was set to be held in Spokane on October 25, 2002, exact times and location to be announced.

There being no further business, the meeting was adjourned. Both Judge Williams and Don Boyd thanked the members for their participation and stated that the committee process is very helpful and of great benefit to the court.